

The Texas Natural Resource Conservation Commission (commission) adopts the amendments to §319.9, Self-Monitoring and Quality Assurance Schedules, and §319.11, Sampling and Laboratory Testing Methods, *without changes* to the proposed text as published in the April 12, 2002 issue of the *Texas Register* (27 TexReg 3021) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The amendments to §319.9 and §319.11 are adopted in order to address changes to United States Environmental Protection Agency (EPA) regulations. On September 14, 1998, the State of Texas was authorized by EPA to administer and enforce the National Pollutant Discharge Elimination System (NPDES) program for regulating discharges of pollutants into waters in the state under the federal Water Pollution Control Act, as amended, 33 United States Code, §§1251 *et seq.* (commonly referred to as the Clean Water Act or CWA). The approved state program, i.e., the Texas Pollutant Discharge Elimination System (TPDES) program, 63 FR 51164 (September 24, 1998), is administered by the commission. The amendment to §319.9 is part of the commission's effort to revise several chapters of its rules to maintain equivalency with EPA regulations and to thereby maintain delegated NPDES permitting authority.

The amendment to §319.11 clarifies that analytical methods as described in more recent versions, as well as the latest version of *Standard Methods for the Examination of Water and Wastewater (Standard Methods)*, are acceptable to the commission. The existing language contained within §319.11 refers to 40 Code of Federal Regulations (CFR) Part 136 and the latest edition of *Standard Methods*. The EPA rules generally cite the 18th Edition of *Standard Methods*. However, laboratories may be using 18th,

19th, 20th, or, in the near future, the 21st editions of *Standard Methods*. The commission received inquiries from staff and commercial laboratory personnel concerning the application of the rule. It is not the intent to cite use of the older *Standard Methods* as a violation of §319.11(b).

SECTION BY SECTION DISCUSSION

Section 319.9 is amended to add organic quality control analyses for pharmaceutical pollutants.

Existing §319.9(c) analyses for organics are limited to Gas Chromatography (GC) and Gas Chromatography/Mass Spectroscopy (GC/MS). However, due to 40 CFR Part 439, Pharmaceutical Manufacturing Point Source Category, §319.9(c) is amended to allow additional analytical methods acceptable to EPA. Part 136 of 40 CFR was amended to include additional methods for pharmaceuticals, found in Table 1F, List of Approved Methods for Pharmaceutical Pollutants. These methods include the use of High Performance Liquid Chromatography (method 1667) and Fluorescence Spectroscopy (method D4763). Currently, permittees are unable to comply with the quality assurance requirements specified in §319.9(c), Table 3, since organics are limited to analyses with GC and GC/MS. The entities impacted are direct and indirect dischargers of wastewater subject to 40 CFR Part 439.

Section 319.11 is amended to clarify that effluents may be analyzed according to test methods specified in 40 CFR Part 136 or more recent editions of *Standard Methods* than that cited in Part 136. Currently, EPA rules reference the 18th edition of *Standard Methods*. However, laboratories may be using 18th, 19th, 20th, or, in the near future, the 21st editions of *Standard Methods*. The commission received inquiries from staff and commercial laboratory personnel concerning the application of the rule. 40

CFR Part 136 generally sites the 18th edition of *Standard Methods*. It is not the commission's intention to cite use of the 19th, or future, editions of *Standard Methods* as a violation of §319.11(b). Therefore, the rule is being revised to allow use of more recent editions of *Standard Methods* than cited in the federal regulations as well as the latest edition. The revision maintains existing regulatory flexibility and eliminates unintended permit violations. All wastewater permittees are affected by the adopted amendments.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rulemaking in light of the regulatory analysis requirements of the Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in §2001.0225(g)(3), and because it does not trigger any of the four criteria in §2001.0225(a). The amendments will not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted amendments will update permit rules to incorporate certain federal regulations regarding NPDES permitting requirements. The amendments do not meet the definition of a "major environmental rule" as defined in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal

program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

The commission concludes that a regulatory analysis is not required because the proposed amendment does not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these adopted amendments in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to ensure that permit requirements are equivalent to EPA NPDES permitting regulations. The adopted amendments will substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding federal regulations. This assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by federal law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and found that the rules are subject to the CMP and must be consistent with applicable CMP goals and policies in 31 TAC §501.12 and §501.14. The rulemaking will conform commission rules to EPA requirements for regulating discharges of pollutants under the CWA to maintain delegated NPDES permitting authority. The NPDES requirements incorporated in the commission's rules are consistent

with and will aid in achieving CMP goals and policies. The commission also determined that the rulemaking will not have a direct or significant adverse effect on any coastal natural resource areas, nor will the rulemaking have a substantive effect on commission actions subject to the CMP.

PUBLIC COMMENT

A public hearing was not held on this rulemaking. The public comment period closed May 13, 2002. Reliant Energy submitted written comments.

RESPONSE TO COMMENTS

Reliant Energy filed comments supporting the proposed amendments to Chapter 319 in which it stated that the amendments will clarify the analytical methods available for wastewater analysis; provide for the use of more sensitive methods from recent editions of *Standard Methods*; and improve data quality.

The commission appreciates the support expressed for the amendments to Chapter 319 and concurs with the assessment of associated benefits.

SUBCHAPTER A: MONITORING AND REPORTING SYSTEM

§319.9, §319.11

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.102, which grants the commission the authority to carry out its powers under the TWC; §5.103, which provides the commission the authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state; §5.105, which requires the commission to establish and approve all general policy of the commission by rule; and §5.120, which requires the commission to administer the law for the maximum conservation and protection of the environment and natural resources of the state.

§319.9. Self-Monitoring and Quality Assurance Schedules.

(a) The following table sets forth the self-monitoring schedules applicable to treated domestic sewage effluent.

Figure: 30 TAC §319.9(a) (No change.)

Table 1
 FREQUENCY OF MEASUREMENT

Design Capacity MGD	Flow	BOD ₅	Total Suspended Solids	Chlorine Residual	pH	Collecting of Samples and Taking Measurements
0 to less than 0.10	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.10 to less than 0.50	One instantaneous measurement each working day but not less than five measurements per week (b) (c)	One each week	One each week	One each working day but not less than five measurements per week (c)	One each month	The laboratory tests shall be made on a grab sample collected at peak loading periods, and flow measurements shall be taken concurrently with such grab samples. (d)
0.50 to less than 1.00	The daily flow measured by a totalizing meter	One each week	One each week	One each day of the week	Two each month	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on a composite sample proportioned according to flow, made up of three portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
1.00 to less than 5.00	The daily flow measured by a totalizing meter	Two each week	Two each week	One each day of the week	One each week	The laboratory test excepting the pH and chlorine residual test which are performed on grab sample or insitu shall be made on a composite sample proportioned according to flow, made up of six portions collected no closer together than 2 hours and with the first sample collected no earlier than 10:00 a.m.
5.00 to less than 10.00	The daily flow measured by a totalizing meter	One each weekday (a)	One each weekday (a)	One each day of the week	One each weekday	The laboratory test excepting the pH and chlorine residual test which are performed on grab samples or insitu shall be made on (a) 24-hr. composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.

10.00 or greater	The daily flow measured by totalizing meter	One each day of the week	The laboratory test excepting the pH and the chlorine residual test which are performed on grab samples or insitu shall be made on 24-hour composite samples proportioned according to flow collected no closer together than 2 hours in 12 individual portions.			
------------------	---	--------------------------	--------------------------	--------------------------	--------------------------	--

- (a) Weekday - Monday thru Friday
- (b) Where a totalizing meter is provided, the actual volume of water which has been processed each day should be determined and reported.
- (c) Working Day - A day when the plant is visited for routine work.
- (d) Peak loading period - That time during the calendar day when the maximum flow rate is experienced within the facility.
- (e) Flow - Determined by actual measurement of effluent flow or determined by calculation based upon influent measurement unless effluent flow is specified in the permit.

NOTE: See 31 TAC §319.5(e) concerning additional measurements and documentation.

(b) The following table sets forth the self-monitoring schedules applicable to nondomestic wastewater effluent.

Figure: 30 TAC §319.9(b) (No change.)

Table 2

FREQUENCY OF MEASUREMENT

VOLUME OF MGD

Parameter Flow	0 to less than 0.05	0.50 to less than 0.50	0.50 to less than 2.00	2.00 to less than 10.00	10.00 or greater
	One instantaneous measurement per operating day except on sample days when 3 instantaneous measurements made concurrently with the collection of sample portions are required.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion.	One instantaneous measurement per operating shift - on sample days concurrent with the collection of a sample portion or the reading from a totalizing flow meter.	Six instantaneous measurements per day spaced at equal intervals during the operating period or the reading from a totalizing flow meter.	Instantaneous measurements made each operating hour or the reading from a totalizing flow meter.
pH (a)	1 per day	1 per day	1 per day	1 per day	1 per day
Temperature (b)	1 per day	3 per day	3 per day	6 per day	12 per day
BOD	1 per week	2 each week	2 each week	3 each week	1 per day
COD	1 per week	2 each week	2 each week	3 each week	1 per day
TOC	1 per week	2 each week	2 each week	3 each week	1 per day
Oil & Grease (c)	1 per week	2 each week	2 each week	3 each week	1 per day
Ammonia Nitrogen	1 per week	2 each week	2 each week	3 each week	1 per day
Arsenic	1 per week	2 each week	2 each week	3 each week	1 per day
barium	1 per week	2 each week	2 each week	3 each week	1 per day
Boron	1 per week	2 each week	2 each week	3 each week	1 per day
Cadmium	1 per week	2 each week	2 each week	3 each week	1 per day
Chromium	1 per week	2 each week	2 each week	3 each week	1 per day
Copper	1 per week	2 each week	2 each week	3 each week	1 per day
Lead	1 per week	2 each week	2 each week	3 each week	1 per day
Manganese	1 per week	2 each week	2 each week	3 each week	1 per day

Parameter Flow	0 to less than 0.05	0.50 to less than 0.50	0.50 to less than 2.00	2.00 to less than 10.00	10.00 or greater
Mercury	1 per week	2 each week	2 each week	3 each week	1 per day
Nickel	1 per week	2 each week	2 each week	3 each week	1 per day
Selenium	1 per week	2 each week	2 each week	3 each week	1 per day
Silver	1 per week	2 each week	2 each week	3 each week	1 per day
Zinc	1 per week	2 each week	2 each week	3 each week	1 per day
TSS	1 per week	2 each week	2 each week	3 each week	1 per day
TDS	1 per week	2 each week	2 each week	3 each week	1 per day
Chloride	1 per week	2 each week	2 each week	3 each week	1 per day
Sulphate	1 per week	2 each week	2 each week	3 each week	1 per day
Nitrate Nitrogen	1 per week	2 each week	2 each week	3 each week	1 per day
Sulfide (c)	1 per week	2 each week	2 each week	3 each week	1 per day
Phenol (c)	1 per week	2 each week	2 each week	3 each week	1 per day
Collection of Samples	Samples shall be composite samples made up of three portions, sized proportional to flow, collected to no closer together than one hour and over a span of time not exceeding 24 hours.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the day.	Samples shall be composite samples made up of three portions, sized proportional to flow, one portion being collected during each operating shift or otherwise suitably distributed throughout the operating day.	Samples shall be composite samples made up of six portions, sized proportional to flow, collected concurrently with the instantaneous flow measurements made during a 24 hour time span.	Samples shall be 24 hour composite samples collected in 12 or more individual portions, sized proportional to flow, equally spaced throughout the operating day.

- (a) The required laboratory tests shall be made on grab samples and analyzed immediately after collection or analyzed in situ at the sampling point.
- (b) The temperature shall be measured in situ on the water at the permit sampling point.
- (c) The required laboratory tests shall be made on grab samples.

(c) The following table sets forth the quality assurance requirements for wastewater analyses.

Figure: 30 TAC §319.9(c)

Table 3

REQUIRED QUALITY CONTROL ANALYSES

<u>Parameter</u>	<u>Blank</u>	<u>Standard</u>	<u>Duplicate</u>	<u>Spike</u>
Bacterial	A		B	
Alkalinity		A	B	
Ammonia Nitrogen	A	A	B	B
BOD	A	A	B	
BOD-carbonaceous	A	A	B	
COD	A	A	B	B
Chloride	A	A	B	B
Chlorine-Total or Free		D		
Cyanide-Total or Amenable to Chlorination	A	A	B	B
Fluoride	A	A	B	B
pH		C		
Kjeldahl Nitrogen	A	A	B	B
Metals (all)	A	A	B	B
Nitrate Nitrogen	A	A	B	B
Nitrite Nitrogen	A	A	B	B
Oil & Grease	A	D		
Orthophosphate	A	A	B	B
Oxygen (dissolved)		A	B	
Phenols	A	A	B	
Phosphorus-Total	A	A	B	B
Specific Conductance	A	A		
Sulfate	A	A	B	B
Sulfide	A	A	B	
Sulfite	A	A	B	
TOC	A	A	B	B
TSS	A		B	
TDS	A	A	B	
Organics by GC or GC/MS <u>or other approved methods</u>	A	A	E	E

- A - Wherever specified, at least one blank and one standard shall be performed each day that samples are analyzed.
- B - Wherever specified, duplicate and spike analyses shall be performed on a 10% basis each day that samples are analyzed. If one to 10 samples are analyzed on a particular day, then one duplicate and one spike analyses shall be performed.
- C - For pH analysis, the meter shall be calibrated each day that samples are analyzed using a minimum of two standards which bracket the pH value(s) of the sample(s).
- D - For the oil and grease analysis and chlorine-total or free analysis, standards shall be analyzed on a 10% basis. If one to 10 samples are analyzed on a particular day, then one standard shall be analyzed. Duplicates may be analyzed in lieu of standards for the oil and grease analysis and chlorine-total or free analysis.
- E - For GC and GC/MS analyses, duplicate and spike analyses shall be performed on a 5% basis. If one to 20 samples are analyzed in a month, then one duplicate and one spike analyses per month shall be performed.

§319.11. Sampling and Laboratory Testing Methods.

(a) All sample collection shall be conducted according to recommendations found in the latest edition of *Standard Methods for the Examination of Water and Wastewater* (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or the Environmental Protection Agency manual entitled *Methods for Chemical Analysis of Water and Wastes* (1979), or the Environmental Protection Agency manual entitled *Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents* (1973).

(b) Sample containers, holding times, and preservation methods shall meet requirements specified in 40 Code of Federal Regulations (CFR) Part 136.

(c) Effluents shall be analyzed according to test methods specified in 40 CFR Part 136 or more recent editions of *Standard Methods for the Examination of Water and Wastewater* than those cited in Part 136.

(d) Flow measurements, equipment, installation, and procedures shall conform to those prescribed in the Water Measurement Manual, United States Department of the Interior Bureau of Reclamation, Washington, D.C., or methods that are equivalent as approved by the executive director.

(e) Laboratories shall routinely use and document intralaboratory quality control practices as recommended in the latest edition of the Environmental Protection Agency manual entitled *Handbook for Analytical Quality Control in Water and Wastewater Laboratories*. These practices will include the use of internal quality control check samples.

(f) The sampling and laboratory facilities, data, and records of quality control are subject to periodic inspection by commission personnel. Should the procedures specified in this section not be suitable to any particular situation, nonstandard sampling and testing techniques may be employed in accordance with the procedures outlined in §319.12 of this title (relating to Alternate Sampling and Laboratory Testing Methods).